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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,538	01/27/2004	Michael Jude Iosue	ET 98-41 D2	1649
29306	7590	04/10/2006	EXAMINER	
MARSTELLER & ASSOCIATES, P. C.			DONG, DALEI	
P. O. BOX 803302			ART UNIT	
DALLAS, TX 75380-3302			PAPER NUMBER	
			2879	

DATE MAILED: 04/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/765,538

Applicant(s)

IOSUE, MICHAEL JUDE

Examiner

Dalei Dong

Art Unit

2879

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 January 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-19 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 16-19 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 27 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. The Response filed on January 30, 2005, has been entered and acknowledged by the Examiner.

#### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 16 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,493,111 to Wheeler.

Regarding to claim 16, Wheeler discloses in Figures 1-4, a method of making an image intensifier tube (10), said method including the steps of: providing an annular tube body (12 and 50); providing a microchannel plate (20) disposed within said tube body (12 and 50); providing an electrical contact structure (90) between said tube body (12 and 50) and said microchannel plate (20); providing a yieldably deformable and axially-variable sealing structure (52') sealingly uniting the tube body (12 and 50) with a window member (16), said window member (16) carrying a photocathode (18) and yielding said axially-variable sealing structure (52') while maintaining a selected fine-dimension spacing between the photocathode and microchannel plate.

Regarding to claim 19, Wheeler discloses in Figures 1-4, the step of providing yieldably deformable electrical contact structure (90) between said tube body (12 and 50) and the said microchannel plate (20).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,493,111 to Wheeler in view of U.S. Patent No. 5,338,927 to de Groot.

Regarding to claim 17, Wheeler discloses in Figures 1-4, a method of making an image intensifier tube (10), said method including the steps of: providing an annular tube body (12 and 50); providing a microchannel plate (20) disposed within said tube body (12 and 50); providing an electrical contact structure (90) between said tube body (12 and 50) and said microchannel plate (20); providing a yieldably deformable and axially-variable sealing structure (52') sealingly uniting the tube body (12 and 50) with a window member (16), said window member (16) carrying a photocathode (18) and yielding said axially-variable sealing structure (52') while maintaining a selected fine-dimension spacing between the photocathode and microchannel plate.

However, Wheeler does not disclose forming fine-dimension spacing structure extending axially between said photocathode and said microchannel plate. de Groot teaches in Figure 2, a fine-dimension spacing structure (25) extending axially between said photocathode (6) and said microchannel plate (7) (column 4, lines 51-57) for the purpose of preventing any change in the distance between photocathode and the microchannel plate during the operating lifetime of the image tube.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilize the fine-dimension spacing structure of de Groot for the image intensifier tube of Wheeler in order to prevent changes in the distance between the photocathode and the microchannel and thus maintain a precise distance between the photocathode and the microchannel plate during the operating lifetime of the image intensifier tube.

Regarding to claim 18, Wheeler in view of de Groot discloses the claimed invention except for the fine-dimension spacing structure is formed integrally with the photocathode. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the fine-dimension spacing structure integral with the photocathode, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

***Response to Arguments***

6. Applicant's arguments filed January 30, 2005 have been fully considered but they are not persuasive.

In response to Applicant's argument that the Wheeler reference fails to teach or suggest yieldably deformable and axially-variable sealing structure, the Examiner respectfully disagree. The Examiner asserts that clearly shown in Figures 1 and 3 of the Wheeler reference, the braze flange member 52 is deformable (where it is bend at two places) and it is axially-variable (varied at the corner of the member) to yield the sealing structure. Thus, the Examiner asserts that the prior art of record teaches the claimed invention and maintains the rejection.

Also, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 2879

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dalei Dong whose telephone number is (571)272-2370. The examiner can normally be reached on 8 A.M. to 5 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nimeshkumar Patel can be reached on (571)272-2457. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

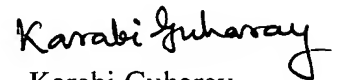
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D.D.

March 23, 2006



Karabi Guharay  
Primary Examiner  
Art Unit 2879